

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

APRIL 1996 SESSION

FILED

July 26, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,)
)
 Appellee,)
)
 v.)
)
 MARCUS CORTEZ ALDRIDGE,)
)
 Appellant.)

No. 02C01-9508-CC-00230

Henry County

Hon. Julian P. Guinn, Judge

(Aggravated Assault)

For the Appellant:

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OPINION FILED: _____

AFFIRMED

Joseph M. Tipton
Judge

OPINION

The defendant, Marcus Cortez Aldridge, was convicted of aggravated assault, a Class C felony, pursuant to a guilty plea in the Henry County Circuit Court. He was sentenced to thirty-seven months as a Range I, standard offender. In this appeal as of right, he contends that the trial court erred in denying his request for a Community Corrections sentence or, in the alternative, for full probation.

The record reflects that on September 4, 1994, the defendant assaulted the victim, Tarrel Parker, with a teeball bat during an argument in the rear parking lot of a McDonald's restaurant. The victim suffered a three-inch cut to his head that required medical attention at the local emergency room. The defendant, seventeen years old at the time of the offense, was transferred to adult court where he entered a guilty plea to aggravated assault. In his statement to the probation officer, the defendant claimed that during the altercation and after his companion pulled out a pistol, the victim reached for his back pocket and the defendant thought that the victim might have had a gun.

At the April 1995 sentencing hearing, the defendant sought alternative sentencing and argued that he should be sentenced to the community corrections program. He testified that he is the father of a young child who resides in his care. He also stated that he has been employed with Taco Bell since August of 1994 and is working about thirty-five hours a week while attending high school. He explained that he missed several days of school due to his child being sick and that he did not have enough credits to graduate. Instead, he stated his intention to take classes toward obtaining his graduate equivalency degree in the summer. The defendant admitted to two juvenile offenses -- one for aggravated burglary and another for underage consumption of alcohol. He also admitted that he had been suspended from riding the school bus for spitting on another student and had been suspended for fighting once

during his senior year of high school. He expressed remorse for his actions and acknowledged that he should not have struck the victim.

The trial court denied community corrections and probation. It stated that there were needs to deter others from resorting to using deadly weapons to settle arguments and to avoid depreciating the seriousness of the offense. The trial court also considered the potential for a split confinement sentence, but concluded that there were not expert or other resources available locally for dealing with such a youthful prisoner, and it determined that the Department of Correction would have better tools to deal with the defendant in terms of meeting his rehabilitative needs.

Appellate review of sentencing is de novo on the record with a presumption that the trial court's determinations are correct. T.C.A. §§ 40-35-401(d) and -402(d). As the Sentencing Commission Comments to these sections note, the burden is now on the appealing party to show that the sentencing is improper. This means that if the trial court follows the statutory sentencing procedure, makes findings of fact that are adequately supported in the record, and gives due consideration and proper application of the factors and principles that are relevant to sentencing under the 1989 Sentencing Act, we may not disturb the sentence even if a different result were preferred. State v. Fletcher, 805 S.W.2d 785, 789 (Tenn. Crim. App. 1991).

First, we note that the defendant was not eligible for sentencing under the Community Corrections Act because only persons convicted of "property-related, or drug/alcohol-related felony offenses or other felonies not involving crimes against the person as provided in . . . title 39, chapter 13, parts 1-5" are eligible for community corrections. T.C.A. § 40-36-106(a)(2) (emphasis added). Aggravated assault is proscribed by T.C.A. § 39-13-102, which obviously is a crime against the person as provided in Title 39, chapter 13, part 1. Also, there is no indication in the record that the

defendant possesses any special need requiring treatment that necessitates that his sentence will be best served in the community. T.C.A. § 40-36-106(c).

Although probation must be automatically considered, the defendant is not entitled to probation as a matter of law. See T.C.A. § 40-35-303(b); Sentencing Commission Comments to T.C.A. § 40-35-303; Fletcher, 805 S.W.2d at 787. However, as a Range I standard offender who has been convicted of a Class C felony, he is presumed to be a favorable candidate for a sentence other than confinement, if there is no evidence to the contrary. See T.C.A. § 40-35-102(5) and (6). The presumption in favor of alternative sentencing may be rebutted if (1) “confinement is necessary to protect society by restraining the defendant who has a long history of criminal conduct,” (2) “confinement is necessary to avoid depreciating the seriousness of the offense or confinement is particularly suited to provide an effective deterrence to others likely to commit similar offenses,” or (3) “measures less restrictive than confinement have frequently or recently been applied unsuccessfully to the defendant.” T.C.A. § 40-35-103(1)(A)-(C); see Ashby, 823 S.W.2d at 169.

This case is somewhat of an anomaly. There is evidence in the record that would favor the defendant receiving a sentencing alternative that would include some confinement. His history of delinquency and disciplinary problems, coupled with the circumstances surrounding the present offense, justify him not receiving full probation. In this respect, we interpret the trial court’s comments to mean that it would have ordered a period of confinement followed by some form of community release if it had believed that proper resources were available locally to deal with the defendant’s particular housing and rehabilitation needs. Thus, it is apparent that the trial court believed the interests of the defendant to be better served by his being housed in a Department of Correction facility. The defendant presents nothing to refute the trial

court's conclusion that local resources were insufficient in this case. Rather, he only argues that the evidence shows that he is entitled to supervised probation.¹

Under these circumstances, the presumption that the trial court's determinations are correct has not been overcome. The judgment of conviction is affirmed.

Joseph M. Tipton, Judge

CONCUR:

Paul G. Summers, Judge

Jerry L. Smith, Judge

¹We note that at the April 1995 sentencing hearing, the trial court denied the defendant bond pending appeal. This case was assigned for review on the briefs in April 1996. The record reflects neither a review of the bond denial nor a motion for expedited appellate review. Given the fact that the defendant was eligible for release well in advance of the case being assigned in this court, the issues in this case may very well be moot.